

Cause No. PD-0722-19

In The Court Of Criminal Appeals Of The
State Of Texas
Austin, Texas

FILED
COURT OF CRIMINAL APPEALS
10/15/2020
DEANA WILLIAMSON, CLERK

BRADEN DANIEL PRICE,

Petitioner-Appellant,

vs.

THE STATE OF TEXAS,

Respondent-Appellee.

ON DISCRETIONARY REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT
NO. 04-0231-CR

**MOTION FOR LEAVE TO FILE OUT-OF-TIME MOTION,
AND MOTION FOR EXTENSION OF TIME TO FILE MR. PRICE'S
MOTION FOR REHEARING**

TO THE HONORABLE JUDGES OF THE TEXAS COURT OF CRIMINAL
APPEALS, AUSTIN, TEXAS:

NOW COMES RONALD P. GUYER, Attorney for Petitioner, BRADEN
DANIEL PRICE, and pursuant to TEX. R. APP. P. 10.5(b), and 79.1 & 79.6,
respectfully moves this Honorable Court for a thirty-day extension of time, to
Monday, November 9, 2020, to file a *Motion for Rehearing* in his client's behalf.

Pursuant to TEX. R. APP. P. 2, counsel respectfully seeks leave to file this extension request one week out-of-time.

I.

Statement Of The Case

Petitioner Braden Daniel Price was charged by indictment with possession of over 50 pounds of marihuana, contrary to TEX. HEALTH & SAFETY CODE § 481.121. *State of Texas vs. Braden Daniel Price*, Cause No. 2017-CR-10496. In the trial court, Mr. Price filed a pretrial motion to suppress evidence seized based on an unconstitutional search. The motion was heard and determined against him by the Honorable Catherine Torres-Stall, Judge of the 175th Judicial District Court, Bear County, Texas. Mr. Price timely appealed to the Fourth Court of Appeals. On May 8, 2019, a panel of the Fourth Court, consisting of Justices Alvarez, Chapa, and Rios, reversed the judgment of the trial court, finding the search unlawful. *Price v. State*, 04-18-00628-CR, 2019 WL 2013849 (Tex.App. - San Antonio, May 8, 2019).

On August 15, 2019, the State sought discretionary review in this Court which was granted on October 19, 2019. The case was submitted on March 23, 2020. On September 23, 2020, a majority of this Court reversed the decision of the Fourth Court, with four judges writing, or joining, in dissents.

II.

Motion To Extend The Time To File Mr. Price's Motion For Rehearing

Under TEX. R. APP. P. 79.1, Mr. Price's motion for rehearing was due 15 days from the date of this Court's opinion—here, on October 8, 2020. Under TEX. R. APP. P. 79.6, this Court may extend the time for filing a motion for rehearing where the motion is filed within the fifteen-day period. Counsel respectfully requests a thirty-day extension of time, to Monday, November 9, 2020, to file a motion for rehearing in Mr. Price's behalf. This is counsel's first request for an extension of time.

III.

Motion To Leave To File Extension Motion One Week Out-Of-Time

Under TEX. R. APP. P. 2, this Court, on a party's motion, may suspend the operation of a rule of appellate procedure for good cause shown. Counsel respectfully seeks leave of Court to file his extension request one week out-of-time for good cause, and in the interests of justice.

IV.

Grounds For Requests

From September 20-28, 2020, counsel took his annual vacation to the Colorado mountains. While in the mountains, counsel was without Internet service. Counsel

returned to San Antonio arriving late on September 28th. The following morning, September 29, 2020, counsel drove to Del Rio, Texas, for a plea hearing in *United States v. Cabrera-Banda*, DR-20-CR-1089, arriving back in San Antonio that night. That same day, counsel was appointed to a difficult case in San Antonio which required his immediate attention as the defendant was seeking to withdraw his plea of guilty based on a conflict of interest. *United States v. Henderson*, SA-2016-CR-324. Counsel therefore did not see this Court's opinion until September 30, 2020.

Between September 30 and October 8, 2020, counsel again traveled to Del Rio for a docket call in *United States v. Hernandez*, DR-20-CR-1361, visited numerous prisoners in Del Rio, and was appointed to another case which required a lengthy intake interview. On October 6, 2020, counsel was out for the day undergoing a medical procedure. In this interval, and up through today's date, counsel has been working on a difficult medicare-medicaid fraud case in *United States v. Garcia-Moya*, DR-19-CR-1966, and has been completing the information necessary to file his federal income tax return due today.

Counsel does not do much appellate work, and in the press of all of these events, mistakenly failed to double-check the appellate rules, and believed in error that he had 30 days to file a timely motion for an extension of time to file a motion for rehearing. Counsel apologizes to the Court for his tardiness, but was

overwhelmed with his workload, additional travel requirements, and a medical issue upon his return from Colorado.

Beyond the foregoing, in light of this Court's decision—which included significant dissenting opinions, and what appears to be an issue of first impression—counsel has felt the need to reach out to more experienced appellate attorneys to assist him with a motion for rehearing. Counsel is in discussions with other attorneys, but has not had time to firm anything up. Given Mr. Price's substantial legal issue, and the various thoughts expressed by the judges of this Court, counsel believes that an extension of time to file a motion for rehearing is in the best interest of Mr. Price, and might be helpful to this Court. For all of these reasons, counsel suggests that it would be appropriate for this Court to exercise its discretion under Rule 2 to permit him to file this motion out-of-time.

PRAYER

FOR THESE REASONS, COUNSEL respectfully prays that this Honorable Court will grant him leave to file his extension motion out-of-time, and will afford him until Monday, November 9, 2020, to file a motion for rehearing in Mr. Price's behalf.

Respectfully submitted,

s/ RONALD P. GUYER

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CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing motions, through
Texas efilings on:

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– on this the 15th day of October, 2020.

s/ RONALD P. GUYER

RONALD P. GUYER